IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISCELLANEOUS CIVIL APPLICATION NO.3 OF 2007

1. Mrs. Jaee Rahul Abhyankar
2. Master Rohan Rahul Abhyankar ..Applicants.

Vs.

Mr. Rahul Jayant Abhyankar ..Respondent.

Mr.Madhav J. Jamdar, adv. for the Applicants.
Mr.G.R.Hegde, adv. for the Respondent.

CORAM : J.H.BHATIA, J.
DATE : NOVEMBER 23, 2007.

P.C.:

1. The applicant no.1 is the wife of the respondent. Applicant No.2 is their minor child. Admitted facts are the marriage of the petitioner no.1 and respondent had taken place on 20th August, 2000 and they were blessed with son on 18-3-2003. Relations between the husband and wife got strained and in October, 2005, applicants filed an application for maintenance Petition C.No. 57 of 2005 for maintenance before the Family Court, Pune. Thereafter on 19-7-2006 the respondent/husband filed Petition A. No.584 of 2006 for divorce and on 5-8-2006, the respondent filed Petition D. No.163 of 2006 for custody of the applicant no.2. All these three matters are pending before the Family Court, Pune. Applicants by this application seek transfer of these three matters from

Family Court, Pune to the Family Court, Mumbai on the ground that applicant no.1 wife, who was previously in service at Pune has resigned that job and shifted to Mumbai where her parents are also residing. She shifted to Mumbai sometimes in January, 2006. Their son applicant no.2 was admitted in Junior K.G. in June, 2006. It is contended that taking into consideration the age of the child and the fact that the applicants will be required to travel frequently from Mumbai to Pune will cause a lot of inconvenience to them. It is also contended that because the child is residing in Mumbai, petition for custody could be filed only in Mumbai.

2. Application is opposed by the respondent denying that any inconvenience is going to be caused to the applicants.

3. Heard the learned counsel for both the Parties. The learned counsel for the applicants contended that besides the fact that applicant no.1 is presently residing at Mumbai and pursuing her studies for M.B.A. in Mumbai, the respondent has also accepted a job in Mumbai and, therefore, it will be convenient to both the parties if the matters are transferred to Mumbai. He also contended that the respondent has not paid any maintenance for the last about six months.

4. On the other hand, the learned counsel for the respondent contended that cause of action of the matters had taken in Pune and all the material witnesses requiring in these matters are from Pune. The applicant herself started litigation by filing a petition before Family Court, Pune. If the matters are transferred from Pune to Mumbai, witnesses will be required to travel frequently from Pune to Mumbai causing lot of inconvenience to them. According to him, it becomes difficult to persuade the witnesses to travel frequently to different station to give evidence, particularly when there is no guarantee that on the given date, evidence of the witnesses will be recorded. The learned counsel after instructions from the respondent made a statement that today only the respondent will make the payment of all the arrears of maintenance by cheque. The learned counsel also made a statement that the respondent is also willing to pay expenditure on journey to the applicant as and when she and her witnesses are required to travel from Mumbai to Pune. The learned counsel also stated that pleadings in the case are already completed and the matters are almost ready for trial. According to him, matters of the year 2006 are being taken up for final hearing by the Family Court, Pune and, therefore, there is a possibility that the matters may be disposed off within

a short time. According to him if at this stage these matters are transferred from Pune to Mumbai, all these matters will have to be re-registered. That procedure itself will take a long time and taking into consideration the huge pendency of the matters in the Family Court at Mumbai, the matters may not be disposed off earlier. That will cause real inconvenience to both the parties. He also pointed out that the applicant no.1 has filed a criminal case under Section 498A against the respondent and that case is pending before the Court in Pune and she does not seek transfer of that case.

5. After giving anxious thought to the rival contentions and the provisions of Section 9 of the Guardians and Wards Act, 1890 which provides that if the application is with respect to the guardianship of the person of minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides and all other facts noted above, I find that if it would be only a petition for custody of the child or guardianship, the petition should have been filed in Mumbai. However, the fact remains that initially the applicant no.1 herself filed maintenance application before the Family Court, Pune in October, 2005. After that in July, 2006 the respondent filed divorce petition before the Family Court, Pune and

within a few days after that he also filed application for custody of the child before the same Court. This is how all the three matters are with the Family Court at Pune. Husband and wife lived together for a period of about five years or so at Pune and naturally number of witnesses, who may be required to be examined in these proceedings may also be from Pune. It is well-known fact that it is nowadays very difficult to persuade the witnesses to attend the Court and it becomes further difficult if the witnesses are required to travel from one city to another city to give evidence particularly because one is not sure whether the evidence will be recorded by the Court on the day when the witnesses are called and that the witnesses will not be required to attend the court again and again. In such circumstances, if these matters are transferred to Mumbai, it may cause hardship not only to the respondent but also to his witnesses. Besides, both the parties are already engaged lawyers at Pune and if these matters are now transferred to Mumbai, heavy cost of litigation will have to be borne by them because they will be required to engage lawyers again in Mumbai. As far as payment of arrears of maintenance is concerned, the respondent has already assured that he will make payment of arrears today only by cheque. The learned counsel for the respondent also made a statement that he will be ready to pay the cost of

travelling of the litigants of the applicants as well as her witnesses therefore, no financial difficulty is likely to be caused to the applicants. Admittedly applicant no.1's parents have their own flat at Pune. Therefore, she will have no difficulty of stay at Pune. Mumbai and Pune are well connected by road and railway and it is journey of about four hours. Large number of people every day travel between these cities for jobs or professions or for another reasons. Hence, there will be no special difficulty to applicants. The most important aspect against the request for transfer of these matters is that matters are almost ready for being taken up for final hearing before the Family Court, Pune and if at this stage matters are transferred to Family Court, Mumbai, the matters may not be disposed off for a long time and this will not be in the interest of either of the parties. The applicants may be granted exemption from attending the Court unless their presence is absolutely necessary in all the matters. Taking into consideration all these circumstances, I find that it will not be in the interest of justice and not even in the interest of either of the parties to transfer these matters from Family Court, Pune to Family Court, Mumbai.

6. For the aforesaid reasons, application stands

rejected. The respondent shall make the payment of arrears by cheque to the applicants today only. He will also bear the expenditure on travelling of the litigants of the applicants. However, the cost of travel of the litigants may be quantified by the concerned Family Court. The learned Family Court shall grant exemption from personal attendance of the applicants unless it is absolutely necessary to have their presence before the Court.

7. At this stage, the learned counsel for the applicants makes a request that stay to the proceedings before the Family court may be continued for a further period of four weeks. Stay to the proceedings shall continue for a further period of four weeks.

[J.H.BHATIA, J.]